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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------------------------------------------------------------------|-------------|----------------------|----------------------------|------------------|
| 10/781,949 | 02/20/2004 | Anthony M. Ging | 4398-286 | 9703 |
| 23117 | 7590 | 12/13/2004 | | |
| NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714 | | | | |
| | | | EXAMINER PATEL, NIHIR B | |
| | | | ART UNIT 3743 | PAPER NUMBER |

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|-----------------------------|--|
| Office Action Summary | Application No. 10/781,949 | Applicant(s) GING ET AL. | |
| | Examiner Nihir Patel | Art Unit 3743 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02.20.2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>07.22.2004</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Replogle US Patent No. 3,117,574. Referring to claim 1, Replogle discloses a quickly applied breathing mask and associated head harness that comprises first and second straps 10 and 11 (see figure 2) each adapted to be provided to a mask frame of the mask (see figures 1 and 2), where each of the first and second straps includes a yoke (see figure 2) each yoke being constructed and arranged to accommodate at least one of a pre-adult patient or a small sized adult patient.

Referring to claim 2, Replogle discloses an apparatus wherein each yoke includes a recess structure (see figure 2) to allow connection between the frame and the yoke via a connector clip (see figure 2), each yoke includes a first dimensioned measured from the recess to a top portion of a yoke vertical finger 15 (see figure 2), a second dimension measured from the recess to each end portion of yoke horizontal finger 14 (see figure 2), a third dimension measured from the recess to a rear edge of the yoke vertical finger and a fourth distance measured from the recess to lower edge of the lower finger (see figure 2).

Referring to claim 7, Replogle discloses an apparatus that comprises an outer membrane including a face-contact portion to form a seal with the patient (see figures 1 and 2); and an underlying rim positioned below the membrane (see figures 1 and 2), wherein the membrane and

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the rim are formed and positioned with respect to one another to accommodate at least one of a pre-adult patient or a small sized adult patient (refer to figures 1 and 2).

Referring to claim 13, Replogle discloses a frame connection portion that is provided opposite the face contact portion, wherein the cushion has a generally stepped and/or sloped profile such that a projected area of the frame contact portion is generally larger than an area defined by the face contact portion of the membrane (see figures 1 and 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Replogle US Patent No. 3,117,574 in view of Wright US Patent No. 4,657,010. Replogle discloses the applicant's invention as claimed with the exception of providing a yoke that comprises a first distance that is about 90-110mm, the second distance is about 80-100mm, the third distance is about 25-40mm and the fourth distance is about 45-55mm. Wright provides masks that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing masks that can be adjusted to fit the facial dimensions of the wearer.

After reviewing the applicant's specifications the examiner found no criticality on why the yoke must be the particular dimensions as described in the applicant's specifications and in

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claims 3, 4, 8, 9, 10 and 11 and considers it a matter of design choice since the size of the yoke depends on the individual.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Replogle US Patent No. 3,117,574 in view of Norfleet US Patent No. 6,418,929. Replogle discloses the applicant's invention as claimed with the exception of providing first and straps that are joined to one another at a rear portion of the patient's head in use via a cross over member. Norfleet discloses an infant oxygen mask that provides first and straps that are joined to one another at a rear portion of the patient's head in use via a cross over member. Therefore it would have been obvious to modify Replogle's invention by providing first and straps that are joined to one another at a rear portion of the patient's head in use via a cross over member in order to provide a better contact between the patent and the mask.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Replogle US Patent No. 3,117,574 in view of Anscher US Patent No. 6,000,109. Replogle discloses the applicant's invention as claimed with the exception of providing headgear that includes a clip that is made of polypropylene. Anscher discloses a buckle assembly that is made from polypropylene. Therefore it would have been obvious to modify Replogle's invention by providing clip/buckle that is made from polypropylene in order to reduce the manufacturing cost and so that it can last longer.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP
December 1st, 2004



Henry Bennett
Supervisory Patent Examiner
Group 3700